IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.K.MOHANAN

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

Crl.Rev.Pet.No. 1108 of 2000

CRA.151/1994 of SESSIONS COURT, MANJERI
CC.274/1992 of JUDL. MAGISTRATE OF FIRST CLASS, MALAPPURAM
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REVN. PETITIONER/APPELLANT/ACCUSED:

V. SASIDHARAN, S/O. NARAYANAN,
VAZHIKODAN HOUSE, PERUMIGHAM P.O,
FEROKE, CALICUT.

BY ADV. SRI.THOMAS ANTONY
SRI. K.M. JAMALUDHEEN

RESPONDENTS/ RESPONDENTS/ COMPLAINANT:
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1. THE STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. V.K. KAMALA, W/O. HARIDAS, KUNNATH HOUSE,
PALLIKKAL P.O, CHELAMBRA, MALAPPURAM.

BY ADV. SRI. K. RAMAKUMAR
PUBLIC PROSECUTOR SRI. C.M. KAMMAPPU.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.Rev.Pet.No. 1108/2000

Order on Crl. M.P. No. 5843/2000 in Crl. R.P. No. 1108/2000

Closed.

17.10.2007 **V.K.MOHANAN, JUDGE.**

// True Copy //

P.A. to Judge.

jg

V.K.MOHANAN, J.

Crl. R.P. No. 1108 of 2000

Dated, this the 17th day of October, 2007

O R D E R

The petitioner herein is the appellant in Criminal Appeal No. 151/94 on the file of the Court of Sessions, Manjeri, which was filed challenging the judgment of the Judicial First Class Magistrate Court, Malappuram in C.C.No. 274/1992, by which, the petitioner herein, who is the accused, is convicted under section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for a period of one year. After having failed in the two consecutive proceedings, the petitioner approached this Court challenging the conviction and sentence passed by the lower appellate court as well as the trial court.

2. The complaint was filed alleging offence under Section 138 of the Negotiable Instruments Act, wherein, the allegation is that the petitioner-accused obtained a loan of Rs. 13,100/- from the complainant on 13/02/1992. According to the complainant, as the consideration of the loan amount, the accused issued a cheque on 15/03/1992. It is the further case of the complainant that when the cheque was presented for encashment, the same was dishonoured

for insufficiency of fund. Thereafter, after issuing the statutory notice and on failure on the part of the revision petitioner-accused to discharge the debt, the complainant was forced to approach the trial court by filing the above complaint. During the trial, the complainant was examined as PW1 and marked Exts.P1 to P5 as prosecution exhibits. From the side of the defendants, DW1 and DW2 were examined and marked Ext.D1 as documentary evidence. After appreciating the evidence and materials on record, the trial court found that the accused-revision petitioner has committed the offence under Section 138 of the Negotiable Instruments Act and accordingly, he is convicted and sentenced to undergo simple imprisonment for one year. The said judgment of the court below was on 28/04/1994. Challenging the above conviction and sentence, the petitioner preferred an appeal as Criminal Appeal No. 151/94 before the Sessions Court, Manjeri, which was dismissed as per the judgment dated 31/10/2000, by which the conviction and sentence passed by the trial court was confirmed, it is the above conviction and sentence challenged in this revision petition.

3. When the matter is taken for consideration, the learned counsel for the revision petitioner submits that he is prepared to pay off the cheque amount and a further sum of Rs. 2,000/- as

compensation under Section 357 of the Code of Criminal Procedure, to which the learned counsel appearing for the respondents has also agreed. Therefore, I am of the view that in the interest of justice, though I am confirming the order of conviction passed by the court below, the sentence can be modified and reduced.

4. Accordingly, revision petitioner's conviction under section 138 of the Negotiable Instruments Act is confirmed but the sentence is modified and he is directed to undergo simple imprisonment for one day or till rising of the court, provided, he is paying the cheque amount and a further sum of Rs. 2,000/- to the complainant-respondent under Section 357(3) of the Cr.PC. If he is not paid the amount as directed, he shall undergo simple imprisonment for a period of one year.

5. The revision petitioner is directed to appear before the trial court on 03/12/2007 for execution of modified sentence. It is made clear that the trial court is free to initiate proceedings against the accused and his sureties, if he does not appear before the court below as directed. The Registry is directed to transmit the records forthwith to the Court of Judicial First Class, Malappuram.

(V.K.MOHANAN, JUDGE.)

jg